

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

WAYNE E. WILLIAMS,

Petitioner,

v.

JUDY P. SMITH,

Respondent.

Case No. 17-CV-411-JPS
7th Circuit Case No. 17-2957

ORDER

On August 30, 2017, the Court dismissed Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket #22). The Court determined that the petition is untimely, based both on the record before it and Petitioner's failure to meaningfully dispute Respondent's statute of limitations argument. The Court therefore entered judgment in favor of Respondent. (Docket #23). Petitioner filed a notice of appeal on September 21, 2017. (Docket #24). Buried within the notice of appeal is a request for leave to proceed *in forma pauperis* on appeal. *Id.* at 2–3. For the reasons stated below, the Court will deny that request.

Petitioner, a prisoner proceeding *pro se*, may not proceed without prepayment of the filing fee on appeal if the Court certifies in writing that the appeal is not taken in "good faith." 28 U.S.C. § 1915(a)(3). To determine whether a prisoner takes an appeal in "good faith," the Court must determine whether "a reasonable person could suppose that the appeal has some merit." *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000); *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). An appeal is taken in "good

faith” when it seeks review of an issue that is not clearly frivolous. *Lee*, 209 F.3d at 1026.

The fact that the Court has already denied Petitioner a certificate of appealability, *see* (Docket #22 at 4–5), is not fatal to a request to proceed *in forma pauperis* on appeal, since the standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith for purposes of proceeding *in forma pauperis* on appeal. *See Walker*, 216 F.3d at 631–32. Thus, an unsuccessful movant for relief under Section 2254 may proceed *in forma pauperis* on appeal even after a district court has denied issuance of a certificate of appealability. *See id.*

While it is possible for a habeas petitioner to warrant *in forma pauperis* status on appeal despite being denied a certificate of appealability, this is not such a case. Nowhere in his notice of appeal or other submissions does Petitioner identify any alleged error this Court committed. Moreover, the Court’s order dismissing the petition reveals that well-settled principles of law—both substantively, as to the habeas corpus statute of limitations, and procedurally, as to Petitioner’s responsibility to oppose Respondent’s motion to dismiss—establish that the petition is untimely. As a result, the Court has no basis on which to conclude that Petitioner’s appeal is non-frivolous, and the Court therefore finds that his appeal is not taken in good faith.

Finally, because the Court certifies that the appeal is not taken in good faith, the Court provides the following information to Petitioner regarding proceeding before the Seventh Circuit. Petitioner will not be able to proceed on appeal without prepayment of the filing fee unless the Court of Appeals gives him permission to do so. Petitioner has thirty (30) days

from the date of this Order to request that the Seventh Circuit review the Court's denial of his request for leave to appeal without prepayment of the filing fee on appeal. Fed. R. App. P. 24. If Petitioner requests review by the Seventh Circuit, he must include an affidavit and statement of issues he intends to present on appeal, pursuant to Fed. R. App. P. 24(a). He must also provide a copy of this Order, in addition to the notice of appeal he previously filed. If Petitioner does not request review of this order, the Seventh Circuit may choose not to address the Court's denial of Petitioner's motion; instead, it may require Petitioner to pay the full filing fee before it considers his case. Failure to pay a required fee may result in dismissal of the appeal.

Accordingly,

IT IS ORDERED that Petitioner's request for leave to proceed on appeal *in forma pauperis* (Docket #24) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 26th day of September, 2017.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge